



THE CITY OF NEW YORK
LAW DEPARTMENT

ZACHARY W. CARTER
Corporation Counsel

100 CHURCH STREET
NEW YORK, NY 10007

BRIAN J. FARRAR
Senior Counsel
Phone: (212) 356-2377
Fax: (212) 356-1148
Email: bfarrar@law.nyc.gov

July 30, 2015

BY ECF & HAND

Honorable John Gleeson
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Curtis Darby v. New York City Police Department, et al.
14-CV-4078 (JG) (VVP)

Your Honor:

I am a Senior Counsel in the Office of Zachary W. Carter, Corporation Counsel of the City of New York, and I am the supervisor of Assistant Corporation Counsel Kathryn Sprovieri, who is handling this matter. I write to bring to the Court's attention a disturbing phone message from plaintiff, who is proceeding *pro se*, that was left in Ms. Sprovieri's voicemail box over this past weekend. In the audio message, a copy of which is attached hereto for the Court's reference, plaintiff uses obscene and degrading language towards Ms. Sprovieri and threatens to kill her. Although plaintiff subsequently left a voice message purportedly apologizing for his prior threats, a copy of which is also attached, it does not diminish the severity of the threats he made. Thus, it is our Office's position that plaintiff's threatening conduct is severely inappropriate and warrants immediate dismissal of this action, with prejudice.

By way of background, this is a §1983 action in which plaintiff brings claims against two New York City Police Officers regarding an alleged incident that occurred on October 25, 2012. Prior to the aforementioned voicemail, plaintiff failed to provide responses to discovery requests, failed to respond to a deficiency letter, failed to appear for his Court-Ordered deposition on May 18, 2015, and failed to appear for a status conference on May 21, 2015. Thereafter, the Honorable Magistrate Judge Viktor V. Pohorelsky issued an Order to Show Cause to plaintiff on June 18, 2015. After the order was issued, plaintiff appeared unannounced and uninvited to this Office on two separate occasions, and then telephoned Ms. Sprovieri practically every day up until a few days before the Order to Show Cause hearing, in which he made multiple conflicting statements about why he could not appear at the Order to Show Cause hearing. The Court adjourned the hearing until July 9, 2015, at which time plaintiff again failed to appear. After failing to show up for the adjourned conference, plaintiff later appeared unannounced at Magistrate Judge Pohorelsky's Chambers. At that point, Magistrate Judge Pohorelsky warned

plaintiff that he must comply with all Court Orders, and discovery, and ordered that plaintiff's deposition take place on August 25, 2015.

Since July 9th, plaintiff has been leaving 2-3 telephone messages a day for Ms. Sprovieri, which have become increasingly hostile and harassing. The recent call in which he threatened to kill her has caused her significant distress and is the type of conduct that warrants dismissal. See Cameron v. Lambert, 2008 U.S. Dist. LEXIS 117399, (S.D.N.Y. Nov. 7, 2008) (dismissing a *pro se* plaintiff's complaint with prejudice due to plaintiff's threatening conduct); Nelson v. Eaves, 140 F. Supp. 2d 319, 322-23 (S.D.N.Y. 2001) (dismissing a complaint with prejudice when a *pro se* plaintiff wrote ten "abusive, demeaning, and threatening" letters over the course of two months to opposing counsel, which "reveal[ed] malice and an intent to harass").

Accordingly, in light of the severity of this phone message, and plaintiff's pattern of neglect and harassment, it is respectfully requested that the Court dismiss the action, with prejudice, or impose any further sanction that the Court deems appropriate. Furthermore, while this matter is still pending, it is also requested that the Court direct plaintiff to limit any communications with this Office by written correspondence.

I thank the Court for its attention to this matter.

Respectfully submitted,

/S
Brian J. Farrar
Senior Counsel

cc: Honorable Viktor V. Pohorelsky (*by hand with enclosures*)
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

cc: Curtis Darby (*by regular mail with enclosures*)
Plaintiff pro se
456 Richmond Terrace
Apt #L.D.
Staten Island, NY 10301